

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,)	Cr. No. 3:09-826 (CMC)
)	
v.)	OPINION and ORDER
)	
Lloyd Tyrecee Bennett,)	
)	
Defendant.)	
_____)	

This matter is before the court on Defendant's letter, construed by this court as a motion to compel the Government to file a Rule 35 motion. ECF No. 1089. This motion is similar to motions to compel previously denied by this court. *See* ECF Nos. 955 & 1077.

Under Rule 35(b), the decision to move for reduction of sentence is solely in the discretion of the Government. The district court is without authority to compel such a motion unless Defendant can show that his cooperation is complete, and that the Government breached the plea agreement or that the Government's failure to file resulted from an unconstitutional motive or was not rationally related to a legitimate government goal. *Wade v. United States*, 504 U.S. 181, 185-86 (1992); *United States v. Butler*, 272 F.3d 683, 686 (4th Cir. 2001). Defendant must make a "substantial threshold showing," *Wade*, 504 U.S. at 186, of either of these elements which should constitute more than a recitation of the assistance provided.

Defendant has made no showing of any change in circumstances since the last time he filed a motion to compel.¹ While he indicates that he is not seeking to compel action by the Government

¹Defendant has recently signed an affidavit in support of the motion for relief under 28 U.S.C. § 2255 filed by another Defendant, Kevin Richardson, in which Defendant disavows information he previously provided to the Government regarding Richardson's involvement in a large-scale drug distribution conspiracy. A copy of this affidavit has been provided to the Government.

and that the Government “didn’t breach [the] agreement,” Mot. at 1, Defendant’s inquiry of the court about “want[ing] to know where I stand [as] far as my assistance,” *id.* is construed by this court as a motion to compel action by the Government. Defendant makes no showing that his cooperation is complete. Additionally, Defendant has not, by his own admission, provided any evidence of a breach of the plea agreement by the Government, nor has he made a “substantial threshold showing” relating to either element noted above. Therefore, Defendant’s motion is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
October 28, 2013